

Volume I
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

No. 1:17-cv-10107-WGY

DAVID SETH WORMAN, et al.,
Plaintiffs,
vs.
CHARLES D. BAKER, et al.,
Defendants.

DEPOSITION OF MICHAEL HALPIN
Friday, September 15, 2017 at 9:40 a.m.
Campbell, Campbell, Edwards & Conroy
One Constitution Center
Boston, Massachusetts 02129

-----Jennifer A. Doherty, CSR-----
Certified Shorthand Reporter

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1 Exhibit 2. What I would like to do here is go
2 through and just confirm. Have you seen these
3 responses before?

4 A. Yes, I have.

5 Q. And what I would like to do is go through
6 and confirm the current status of most of these
7 responses to make sure nothing has changed since
8 they were originally signed. I think the best way
9 to do it is go through one by one here.

10 If you can take a look at the first
11 interrogatory, it asks for incidents in which banned
12 firearms or magazines have been used to commit a
13 crime in Massachusetts. If you look at Page 3, the
14 response there at the top is that after a number of
15 objections: "Without limitation, the Colonel states
16 that the murder of seven individuals on December 26,
17 2000 in Wakefield, Massachusetts at Edgewater
18 Technology, Inc., was committed with guns that
19 appear to have included a banned AKA 47 copycat."

20 Am I correct that the Massachusetts
21 State Police does not maintain comprehensive records
22 regarding the number of crimes that have been
23 committed?

24 A. We do not aggregate them. We do have

1 access to incident reports and other specific
2 documents -- case-specific documents that would help
3 you indicate that, but we don't aggregate or collect
4 that information as a statistic.

5 Q. No database is maintained of a general
6 information?

7 A. Correct. The only closest thing we would
8 have to that is we have an arrest log. It wouldn't
9 necessarily give you the precise answer to this
10 question. It would be all crimes, and the
11 information is, were they arrested, what their
12 charge was and their address.

13 That's the public kind of log
14 information that's collected, and that's all kind
15 of -- that would only show you what they were
16 arrested for. If there were charges amended or
17 whatever brought later, that would be in a different
18 record.

19 Q. Essentially it would be the reporting
20 officer's log of what the initial charges were?

21 A. The reporting officer does an incident
22 report, usually. The arrest log is something
23 different. That's a database collected by the
24 department. We have what's called an administrative

1 A. I would say they should be, and generally,
2 yes.

3 Q. As we sit here today, you're not aware of
4 any incidents in which a banned firearm or magazine
5 was used in a shooting that was determined to be in
6 self-defense?

7 A. I am not.

8 Q. If you can go on to Interrogatory No. 4,
9 it asked for investigations, arrests, or convictions
10 of persons for a possession of a banned firearm or
11 magazine, and the Colonel's response is the incident
12 marked in Interrogatory No. 1 that we discussed. Do
13 you have any additional information that would be
14 responsive to that interrogatory?

15 A. No.

16 Q. The next interrogatory asked for the
17 identity of person or persons responsible for or
18 participated and determined whether a particular
19 firearm is a copy or duplicate of an enumerated
20 banned firearm.

21 After objections, the Colonel's
22 response is he's unaware of any persons employed
23 with the Massachusetts State Police who were
24 responsible for development of the Attorney

1 General's Enforcement Notice. Is that accurate?

2 A. Yes, I believe it is.

3 Q. As we sit here today, are you aware of
4 anyone that was involved?

5 A. No, I am not.

6 Q. The next interrogatory asks for any person
7 or persons responsible for participating in the
8 preparing of a list of guns that are not assault
9 weapons and related questions and answers published
10 by the Attorney General.

11 Are you familiar with the list of
12 guns that are not assault weapons and the related
13 questions and answers that are currently on the
14 Attorney General's website?

15 A. Yes, I am familiar with it.

16 Q. The Colonel's response is that he's not
17 aware of anyone that was responsible or participated
18 in a substantial way with the creation of that list
19 and the answers to the questions. Is that accurate
20 as we sit here today?

21 A. Yes.

22 Q. The next interrogatory asks for the person
23 or persons responsible for the 2016 review that led
24 the Attorney General to issue the Notice of

1 limited to the Notice of Enforcement.

2 And the Colonel's response here is
3 that no particular person at the Massachusetts State
4 Police is responsible for responding to such
5 questions, but a number of Massachusetts State
6 Police personnel could receive random inquiries to
7 which they would respond. So I have a number of
8 questions about that.

9 Number one, are individual
10 Massachusetts State Police Troopers or Officers
11 permitted to answer questions about the scope of
12 this law?

13 A. We generally discourage our officers from
14 giving out legal advice to people; that being said,
15 you know, we have 2,300-plus members, and when
16 citizens come in and ask questions, I think they do
17 try to be as helpful as they can.

18 If a matter is very clear and can be
19 explained to somebody, I think they will sometimes
20 offer a piece of advice. Sometimes they will direct
21 them to other people within the agencies. We
22 sometimes get people referred from a barracks to the
23 legal section and we generally tell people, We're
24 not your lawyers, we can't give you legal advice.

1 That's all meant to prevent, you know, somebody
2 violating the law and using the department as the
3 justification for why they did what they did.

4 So we generally discourage it, both
5 our civilians and our uniform members from giving
6 what we could consider legal advice.

7 Q. Are you aware of any inquiries that have
8 come in to anyone within the Massachusetts State
9 Police about the scope of the challenged laws or the
10 Notice of Enforcement?

11 A. I am not.

12 Q. Hopefully that will streamline the rest of
13 what we're going to go through here today since we
14 did that up front.

15 What I want to talk to you about
16 right now are some of the attributes of the banned
17 firearms and banned magazines. And just so we're
18 clear, when I refer to banned firearms, I'm talking
19 about firearms that are banned under Massachusetts
20 law as either assault weapons, copies or duplicates
21 or that failed the features test that's incorporated
22 in federal law. Does that make sense to you?

23 A. Yes.

24 Q. Does the Massachusetts State Police have a

1 crime but to hopefully prevent it.

2 But this particular function was
3 given to the Fusion Center to read a report of the
4 end of each year specifying, you know, pursuant to
5 what was submitted by local law enforcement and the
6 State Police certain statistics on firearms and
7 firearms activity.

8 Q. So this report represents then an
9 accumulation of data by the law enforcement agencies
10 throughout Massachusetts, at least those who have
11 participated in this?

12 A. Yes. Again, it's a little bit like the
13 RAM system. It's dependent on the participation of
14 those providing the data.

15 Q. Do you know if all law enforcement
16 agencies are required to participate?

17 A. I believe I would have to look
18 specifically, if I may. I think MGL 140, Section
19 131Q. The statute does say "shall" and requires all
20 licensing authorities to report statistical data.

21 Q. So theoretically there should be a
22 comprehensive report?

23 A. Yes.

24 Q. If I could turn your attention to Page 5,

1 which is Bates numbered AG0015307. In the third
2 paragraph on that page it states that: "In 2016,
3 shotguns and rifles accounted for 13 percent or 178
4 guns, and assault rifles comprised 1.5 percent or 22
5 guns of the total crime guns seized." Do you see
6 that?

7 A. Yes.

8 Q. Do you know what it means when it says
9 "total crime guns seized"?

10 A. I'm a little embarrassed to say, maybe I
11 don't.

12 Q. I didn't either. Don't feel embarrassed.

13 A. I have what I believe to be an
14 understanding of it, but I think, again, the crime
15 guns refers to, I believe, any weapon that is
16 required to be statistically reported on. I think
17 that's what that reference means, but I didn't
18 produce this report and I didn't write the report
19 and I would qualify my answer as saying that's my
20 understanding of what it is.

21 Q. So we don't know whether the guns that
22 were seized were used in a violent crime or whether
23 there was a possessory offense and they were seized
24 as a result of that?

1 A. I believe that would be true. Again,
2 that's my understanding. My understanding is that
3 the statistics are of all weapons seized regardless
4 of the circumstances. So my belief would be that
5 crime gun seized just means it was seized because it
6 was either unlawfully possessed, potentially used in
7 a crime, whatever it gets reported. That would be
8 my understanding of it.

9 Q. Who would know exactly what that
10 includes?

11 A. I think Lieutenant Zani presently -- Alan
12 Zani presently runs the crime gun unit. His
13 subordinates and his superiors at the Division of
14 Investigative Services would be the people who had a
15 hand in drafting and authorizing this document,
16 would probably be better equipped to answer that.

17 Q. And this document comes out every year?

18 A. It has since I believe 2015 or '16. I'm
19 not even sure. I think it was -- there may have
20 been one in '14.

21 I know the first years were pretty
22 sparse and incomplete because of the logistics
23 surrounding reporting from everyone and getting that
24 centralized diffusion, so I don't recall if it was

1 A. He may have. He's potentially an end user
2 of that data, not somebody that's involved in the
3 logistics of it, but I think he may be able to shed
4 more light on it than I can.

5 MR. PORTER: Excuse me, just a
6 reminder to let Mr. Nardone finish before you start,
7 just for the benefit of the court reporter.

8 MR. NARDONE: Thank you.

9 BY MR. NARDONE:

10 Q. In that same paragraph it states that
11 under --

12 MR. PORTER: Can you identify it for
13 the record?

14 Q. On Page 5 of what has been marked as
15 Exhibit No. 6, in the third paragraph of Page 5 it
16 states that in 2016 assault rifles comprised 1.5
17 percent of total crime guns seized, and in 2015
18 those percentages -- the percentage for assault
19 rifles was .75 percent. To your knowledge, are
20 those numbers accurate?

21 A. I have no knowledge of the accuracy of the
22 numbers. Again, my belief is it's what's reported.
23 The department -- I have no reason to disbelieve the
24 department received those statistical numbers.

1 be more difficult or less difficult than others but
2 it's still the same test that they need to employ;
3 meaning every officer has to run through the statute
4 to see if the elements of a crime are met or
5 compliance has been met.

6 Q. Was there a written definition of what
7 constitutes a copy or duplicate prior to the Notice
8 of Enforcement?

9 MR. PORTER: Objection.

10 A. I don't recall what the statute says about
11 copy or duplicate and how it uses that terminology,
12 and I think that the federal -- I don't recall
13 what's in the federal statute, but I do believe
14 there may be use of the word "copy or duplicate" of
15 any caliber, I think is the phraseology. So then
16 obviously you have the tests about internal
17 mechanisms and their shared features.

18 So, again, it's a difficult analysis,
19 but it's an analysis that has to be done in order to
20 determine if there was a violation.

21 Q. You said there was an internal analysis
22 component. I don't want to put words in your mouth.
23 What exactly did you mean with that?

24 A. Again, I haven't committed the statute to

1 memory. I thought -- I think, you know, again,
2 there are enumerated banned weapons. There are
3 weapons that they share or have certain features and
4 elements, they are considered banned, and then I
5 believe a weapon is a copy, it's internal -- fires
6 the same way as basically the same weapon, then it
7 would also be banned or not banned based upon its
8 shared features.

9 Q. I'm going to hopefully provide more
10 structure to this.

11 MR. NARDONE: Can you mark this as an
12 exhibit?

13 (Exhibit No. 8 marked for
14 identification.)

15 BY MR. NARDONE:

16 Q. If you can take a moment to refresh your
17 recollection as to the actual statute in
18 Massachusetts, which I believe is on Pages 1 and 2
19 and maybe even some on 3 of this document. Let me
20 know when you've finished looking at it.

21 A. (Complies.)

22 Q. Drawing your attention to Page 1, the
23 bolded language in the first indented paragraph
24 there. It says "or copies or duplicates of the

1 MR. PORTER: Exhibit 8?

2 MR. NARDONE: Yes.

3 Q. And we're going to go through these tests
4 kind of seriatim. At the bottom underneath
5 "guidance" it states that -- it provides a couple of
6 tests for determining whether a firearm is a banned
7 copy or duplicate, the first being the similarity
8 test.

9 If you can take a second to read that
10 and refresh your recollection, make sure you
11 understand rather than reading it all for the court
12 reporter.

13 A. (Complies.) Okay.

14 Q. What does "substantially similar" mean in
15 that test?

16 MR. PORTER: Objection to the form of
17 the question.

18 A. I don't know what it meant from the
19 author. What it means to me is we're looking for --
20 you know, in trying to determine a copy or a
21 duplicate substantial similarities, and I think
22 "substantial" would mean something that is not
23 inconsequential or meaningless but relates to how
24 the weapon is used, what its capabilities are, and

1 also, like I said, the internal structure and
2 mechanism of the weapon. That's how I would
3 interpret it.

4 Q. What would a law enforcement officer look
5 at to make that kind of a determination?

6 MR. PORTER: Objection to the form of
7 the question.

8 A. Again, I would say officers -- you know,
9 they do receive a lot of training in the weapons.
10 Some are more familiar than others, obviously, with
11 certain weapons so they might have their own
12 understanding. They might possess certain
13 knowledge, but, again, they have to -- you know, if
14 they're going to seize a weapon, they would have to
15 have probable cause to believe. I'm not sure making
16 an ultimate determination is the same as forming
17 probable cause. So when an officer believes, based
18 upon whatever information is available, they have a
19 copy, they might appropriately seize the weapon and
20 make an arrest, and that could later be determined
21 by a ballistition or something that, you know,
22 You're wrong. This is entirely different. This is
23 only capable of shooting, you know, one bullet at a
24 time and it's not a banned weapon.

1 So there could be a follow-up to that
2 or there could be enough information available to
3 the officer either through observation evidence or
4 personal knowledge of the weapon to make that
5 decision.

6 Q. Is there any written policy that officers
7 would employ to make these kinds of
8 determinations?

9 A. Well, we do have written policies
10 involving probable cause. They're mostly guided by
11 Massachusetts case law and federal case law on that,
12 but it's pretty much the same for everybody. In
13 order to make an arrest for a receiver you need to
14 have that probable cause to effectuate the arrest.

15 Q. In reference specifically to probable
16 cause for an arrest of a possession of a copy or
17 duplicate, is there any policy for determining
18 substantial similarity that is employed by the
19 department?

20 A. Not that I am aware of.

21 Q. You stated a little a bit earlier --

22 A. I should stop you, or I should qualify my
23 own statement. Are we talking about -- I mean, we
24 now have additional guidance here, so the department

1 would obviously follow the statute and utilize the
2 guidelines from the Attorney General in order to do
3 that, so now the test would be -- the department
4 hasn't, I don't think, promulgated this as an
5 official policy, but it would certainly, as an agent
6 of the Commonwealth, use the guideline for the
7 Attorney General to determine if they have a
8 violation of the law.

9 Q. Maybe I wasn't particularly clear there.
10 I was more focused than that. I get you would apply
11 this generally, but in applying the actual specific
12 test that's under similarity test, is there any
13 written guidance to the officers on how to apply
14 that particular test?

15 A. No, not that I'm aware of.

16 Q. I don't want to put any words in your
17 mouth, but I believe you said earlier one of the
18 factors an officer would use in making these
19 determinations is their training.

20 Are all officers trained on patrol
21 rifles?

22 A. No.

23 Q. Are all officers trained on the internal
24 components of the enumerated banned firearms?

1 A. Not to my knowledge.

2 Q. You would agree with me that the
3 individual officer's knowledge of the internal
4 workings of an enumerated firearm will vary from
5 officer to officer depending on their personal
6 experiences?

7 MR. PORTER: Objection.

8 A. I think that's possible, yes.

9 Q. So individual officers may use different
10 factors to come to a determination if there is
11 probable cause for an arrest then?

12 MR. PORTER: Objection.

13 A. Yes, I think I stated earlier, I think,
14 every officer has to make their probable cause
15 determination based upon what is presently
16 observable in front of them and what they know. So
17 the tests for that varies based upon the
18 circumstances they find themselves in.

19 Q. If you turn over to the next page of the
20 same document, Exhibit 8.

21 A. I'm sorry, where?

22 Q. The next page.

23 MR. PORTER: What page?

24 Q. Page 4, Exhibit 8.

1 in making that determination if you're dealing with
2 a copy or a duplicate.

3 Q. Do your officers receive training on the
4 marketing of firearms?

5 A. Again, as you phrase it, I would say
6 possibly some do and some don't. I would say most
7 don't.

8 Q. The ones who do, what kind of training
9 would that be?

10 A. Again, prior to -- we have now a crime gun
11 unit. Prior to that we had a firearms licensing
12 unit. Individuals assigned to there are expected to
13 be aware of and have knowledge specific to firearms
14 laws and that may include some training in exposure
15 to the marketing end or capabilities of certain
16 weapons, that kind of thing.

17 Q. Do your patrol officers have that kind of
18 training?

19 A. Not to my knowledge. Some may. It's a
20 bit of an aside, but a lot of our officers have
21 particular interests in certain things, such as
22 firearms, and some of them do a lot of their own
23 independent training and teach on the side. Some of
24 them teach, you know, courses that -- either through